

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6062

MICHAEL TYRAN MARSHALL,

Petitioner - Appellant,

versus

JOE SMITH, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. David G. Lowe, Magistrate Judge. (CA-04-112)

Submitted: April 14, 2005

Decided: April 20, 2005

Before WILKINSON, NIEMEYER, and MICHAEL, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Michael Tyran Marshall, Appellant Pro Se. Deana A. Malek, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Michael Tyran Marshall seeks to appeal the magistrate judge's order dismissing as untimely his petition filed under 28 U.S.C. § 2254 (2000),¹ and denying his objections to the magistrate judge's dismissal order.² The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Marshall has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

¹Because the petition was untimely, we do not address the other reasons for dismissal discussed in the district court's opinion.

²Marshall consented to the jurisdiction of the magistrate judge to enter a final order in this case. See U.S.C. § 636(c) (2000); Fed. R. Civ. P. 73.

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED